



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 28  
2600 North Central Avenue -Suite 1400  
Phoenix, AZ 85004-3099

Agency Website:  
[www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (602)640-2160  
Fax: (602)640-2178



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March 24, 2021

New Mexico Philharmonic  
P.O. Box 21428  
Albuquerque, NM 87154

Re: New Mexico Philharmonic  
Case 28-CA-274621

Ladies and Gentlemen:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

**Investigator:** This charge is being investigated by Field Examiner Belinda Johnson whose telephone number is (505) 313-7218. The mailing address is PO Box 244, Albuquerque, NM 87103-0244. If this Board agent is not available, you may contact Deputy Regional Attorney David T. Garza whose telephone number is (505) 313-7217.

**Right to Representation:** You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, [www.nlrb.gov](http://www.nlrb.gov), or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

**Presentation of Your Evidence:** We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your

representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor requests to limit our use of position statements or evidence. Specifically, any material you submit may be introduced as evidence at a hearing before an administrative law judge regardless of claims of confidentiality. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

Further, the Freedom of Information Act may require that we disclose position statements or evidence in closed cases upon request, unless an exemption applies, such as those protecting confidential financial information or personal privacy interests.

**Preservation of all Potential Evidence:** Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

**Prohibition on Recording Affidavit Interviews:** It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

**Correspondence:** All documents submitted to the Region regarding your case **MUST** be filed through the Agency's website, [www.nlr.gov](http://www.nlr.gov). This includes all formal pleadings, briefs, as well as affidavits, documentary evidence, and position statements. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native

format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format).

If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge. If you cannot e-file your documents, you must provide a statement explaining why you do not have access to the means for filing electronically or why filing electronically would impose an undue burden.

In addition, this Region will be issuing case-related correspondence and documents, including complaints, compliance specifications, dismissal letters, deferral letters, and withdrawal letters, electronically to the email address you provide. Please ensure that you receive important case-related correspondence, please ensure that the Board Agent assigned to your case has your preferred email address. These steps will ensure that you receive correspondence faster and at a significantly lower cost to the taxpayer. If there is some reason you are unable to receive correspondence via email, please contact the agent assigned to your case to discuss the circumstances that prevent you from using email.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, [www.nlrb.gov](http://www.nlrb.gov) or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



Cornele A. Overstreet  
Regional Director

Enclosures:

1. Copy of Charge.
2. Commerce Questionnaire

CAO/BJ/tmr

## QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME New Mexico Philharmonic		CASE NUMBER 28-CA-274621	
1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)			
2. TYPE OF ENTITY <input type="checkbox"/> CORPORATION <input type="checkbox"/> LLC <input type="checkbox"/> LLP <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> SOLE PROPRIETORSHIP <input type="checkbox"/> OTHER (Specify )			
3. IF A CORPORATION or LLC			
A. STATE OF INCORPORATION OR FORMATION		B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES	
4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS			
5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR			
6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).			
7A. PRINCIPAL LOCATION:		7B. BRANCH LOCATIONS:	
8. NUMBER OF PEOPLE PRESENTLY EMPLOYED			
A. TOTAL:		B. AT THE ADDRESS INVOLVED IN THIS MATTER:	
9. DURING THE MOST RECENT (Check the appropriate box): <input type="checkbox"/> CALENDAR <input type="checkbox"/> 12 MONTHS or <input type="checkbox"/> FISCAL YEAR (FY DATES )			
		YES	NO
A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value. \$			
B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$			
C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$			
D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$			
E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$			
F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$			
G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$			
H. Gross Revenues from all sales or performance of services (Check the largest amount) <input type="checkbox"/> \$100,000 <input type="checkbox"/> \$250,000 <input type="checkbox"/> \$500,000 <input type="checkbox"/> \$1,000,000 or more If less than \$100,000, indicate amount.			
I. Did you begin operations within the last 12 months? If yes, specify date: _____			
10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING? <input type="checkbox"/> YES <input type="checkbox"/> NO (If yes, name and address of association or group).			
11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS			
NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER
12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE			
NAME AND TITLE (Type or Print)	SIGNATURE	E-MAIL ADDRESS	DATE

## PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

**UNITED STATES OF AMERICA**  
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**NEW MEXICO PHILHARMONIC**

Charged Party

and

**ALBUQUERQUE MUSICIANS ASSOCIATION  
LOCAL 618 A/W AMERICAN FEDERATION OF  
MUSICIANS**

Charging Party

**Case 28-CA-274621**

**AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER**

I, the undersigned employee of the National Labor Relations Board, state under oath that on March 24, 2021, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

New Mexico Philharmonic  
P.O. Box 21428  
Albuquerque, NM 87154

March 24, 2021

\_\_\_\_\_  
Date

Timothy M. Russell, Designated Agent of  
NLRB

\_\_\_\_\_  
Name

*/s/ Timothy M. Russell*

\_\_\_\_\_  
Signature

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**NEW MEXICO PHILHARMONIC, INC.**

**and**

**Case 28-CA-274621**

**MUSICIANS' ASSOCIATION OF  
ALBUQUERQUE, LOCAL 618 OF THE  
AMERICAN FEDERATION OF MUSICIANS**

**COMPLAINT AND NOTICE OF HEARING**

This Complaint and Notice of Hearing is based on a charge filed by Musicians' Association of Albuquerque, Local 618 of the American Federation of Musicians (the Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that New Mexico Philharmonic, Inc. (Respondent) has violated the Act as described below.

1. The charge in this proceeding was filed by the Union on March 22, 2021, and a copy was served on Respondent by U.S. mail on March 24, 2021.

2. (a) At all material times, Respondent, a New Mexico corporation, with an office and place of business in Albuquerque, New Mexico (Respondent's facility) has been operating a symphony orchestra.

(b) In conducting its operations during the period of time described above in paragraph 2(a), Respondent purchased and received at Respondent's facility products, goods, and materials valued in excess of \$5,000 directly from points outside the State of New Mexico.

(c) In conducting its operations during the period of time described above in paragraph 2(a), Respondent purchased and received at Respondent's facility goods valued in excess of \$5,000 from other enterprises located within the State of New Mexico, each of which other enterprises had received these goods directly from points outside the State of New Mexico.

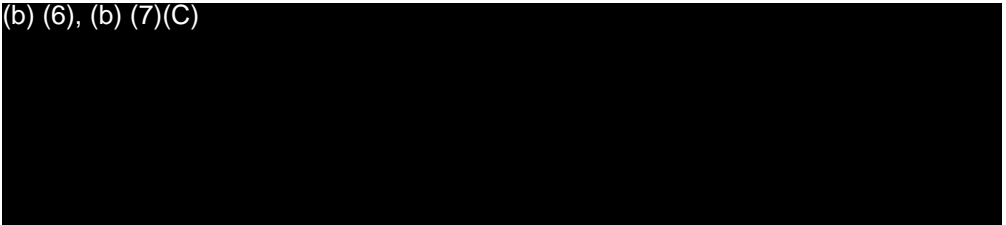
(d) In conducting its operations during the 12-month period ending March 22, 2021, Respondent derived gross revenues available for operating expenses in excess of \$1,000,000.

(e) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

(b) (6), (b) (7)(C)



5. (a) The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All musicians employed by Respondent, excluding guest artists and conductors.

(b) Since at least September 1, 2017, and at all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which (the Agreement) is effective from September 1, 2017, through August 31, 2022.

(c) At all times since about September 1, 2017, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

6. Since about April 16, 2020, Respondent has maintained the following overly-broad and discriminatory rules in its Board Member – Musician Communication Policy:

- (a) 2.a. Any communication that involves terms or conditions of employment of any one musician, some of the musicians and/or the entire orchestra shall be handled by the Orchestra Leadership Committee and the Executive Director as prescribed by the collective bargaining agreement between the NMPhil Board and the Local AFM 610. Board members shall refer their communication to the Executive Director. Musicians shall refer their communication to a member of the Orchestra Leadership Committee.
- (b) 2.b. Business communication of a more general nature should be referred to the Musician Board Management Committee (MBMC) to be addressed at a meeting of that committee. Board members and musicians should refer their communication to one or more members of that committee. Membership includes one or more of the officers of the board and one or more members of the Orchestra Leadership Committee. If in doubt about the current membership of the MBMC, contact the Executive Director for membership.
- (c) 2.c. [...] If, however, either party in a communication feels a need to discuss terms or conditions of musician employment, they shall follow 2.a above.

- (d) 3. Any board member or musician who is in doubt about how to handle a communication situation shall contact their Orchestra Leadership Committee member (if a musician) or the Board President or Executive Director (if a board member).

7. (a) About April 16, 2020, Respondent, by [REDACTED], via email, changed its Board Member – Musician Communication Policy.

(b) The subject set forth above in paragraph 7(a) relates to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(c) Respondent engaged in the conduct described above in paragraph 7(a) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct.

(d) Since about December 4, 2020, the Union has, in writing, via email, requested that Respondent furnish the Union with the following information:

- (1) What concerts productions are included in the budget we received that exclude [REDACTED] as well as exclude productions that include guest artists/speakers.
- (2) What are the costs for guest speakers and artists? Please include the total amount for each separate broadcast.
- (3) Are any of the soloists receiving payments for any of the streaming? If yes, which organization is paying for it?
- (4) Is [REDACTED] planning to conduct the chamber ensembles? If yes, what would [REDACTED] be paid for each concert? What is the total cost involved in bringing [REDACTED] to New Mexico?
- (5) Concert production is for 20/21 is listed at (b) (4) What is the breakdown for each concert series?

(6) General/Administrative/Staff Salaries: 20/21 = (b) (4) and 19/20 = (b) (4). The difference in total salaries is (b) (4). (b) (6), (b) (7)(C) has told us and the orchestra that (b) (6), (b) (7)(C), and (b) (6), (b) (7) administration have taken “substantial cuts.” a) Where are these cuts in the budget? b) What is the breakdown of these salaries?

(7) Total budget for 20/21 = (b) (4). Musician portion of 20/21 budget: (b) (4) for all musicians, “conductors” and “artists”. a) How much goes to the musicians? c) How much goes to “artists”? (b) (4) of the total 20/21 budget is allocated for “musicians, conductors, and artists” (b) (4) of the 20/21 budget is allocated for “General Admin and staff salaries.”

(e) The information requested by the Union, as described above in paragraph 7(d), is necessary for, and relevant to, the Union’s performance of its duties as the exclusive collective-bargaining representative of the Unit.

(f) Since about December 4, 2020, Respondent has failed and refused to furnish the Union with the information requested by it as described above in paragraph 7(d).

(g) About March 17, 2021, Respondent by (b) (6), (b) (7)(C) and (b) (6), (b) (7), via email, bypassed the Union and dealt directly with its employees in the Unit by proposing health and safety terms to employees that had not been previously proposed to the Union.

8. By the conduct described above in paragraph 6, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

9. By the conduct described above in paragraphs 7(a) through 7(c), Respondent has been failing and refusing to bargain collective and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

10. By the conduct described above in paragraphs 7(d) through 7(g), Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act

11. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

In order to fully remedy the unfair labor practices set forth above, the General Counsel seeks an Order providing for all relief as may be just and proper to remedy the unfair labor practices alleged, including, but not limited to, a requirement that Respondent distribute the Notice to Employees to all of its employees by text messaging and by posting on social media websites and on any internal apps used by Respondent to communicate with its employees. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before June 29, 2022, or postmarked on or before June 28, 2022.** Respondent also must serve a copy of the answer on each of the other parties.

The answer must be filed electronically through the Agency's website. To file electronically, go to [www.nlrb.gov](http://www.nlrb.gov), click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is

unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

### **NOTICE OF HEARING**

**PLEASE TAKE NOTICE THAT** at 9:00 a.m. (local time) on a date to be determined, and on consecutive days thereafter until concluded, at a location and by a means and method to be determined, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form

NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Phoenix, Arizona, this 15<sup>th</sup> day of June 2022.

/s/ *Cornele A. Overstreet*

Cornele A. Overstreet, Regional Director

Attachments

**UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
NOTICE**

Case 28-CA-274621

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Darlene Haas Awada, Attorney at Law  
Ogletree, Deakins, Nash, Smoak & Stewart,  
PLLC  
34977 Woodward Avenue, Suite 300  
Birmingham, MI 48009

James A. Montalbano, Attorney at Law  
Youtz and Valdez, PC  
900 Gold Avenue SW  
Albuquerque, NM 87102

**(b) (6), (b) (7)(C)**  
New Mexico Philharmonic  
P.O. Box 21428  
Albuquerque, NM 87154

Albuquerque Musicians Association Local  
618 a/w American Federation of Musicians  
2701 San Pedro NE, Suite 12  
Albuquerque, NM 87110

## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlr.gov](http://www.nlr.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

**Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement.** The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

### II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing.

If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

### III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28

NEW MEXICO PHILHARMONIC, INC.

Case 28-CA-274621

Respondent

and

MUSICIANS' ASSOCIATION OF  
ALBUQUERQUE, LOCAL 618 OF  
THE AMERICAN FEDERATION OF  
MUSICIANS

Charging Party

**ANSWER AND DEFENSES**

Now comes, Respondent New Mexico Philharmonic, Inc. (“Respondent” or “NMPhil”), pursuant to Sections 102.20 and 102.21 of the Rules and Regulations of the National Labor Relations Board (“NLRB”), and by and through their undersigned counsel, answers the Complaint and asserts affirmative and other defenses thereto as follows:

**ANSWER**

1. Respondent admits it received the Charge in Case 28-CA-274621, but lacks information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 1(a) of the Complaint, and, therefore neither admits nor denies those allegations, and leaves the General Counsel to her proofs.

2. (a) With the understanding that the term “at all material times” refers to the dates of the allegations set forth in the Complaint, Respondent admits the allegations set forth in paragraph 2(a).

(b) With the understanding that the time period defined by the term “at all material times” in paragraph 2(a) refers to the dates of the allegations set forth in the Complaint, Respondent admits the allegations set forth in paragraph 2(b).

(c) With the understanding that the time period defined by the term “at all material times” refers to the dates of the allegations set forth in the Complaint, Respondent admits the allegations set forth in paragraph 2(c).

(d) Respondent admits the allegations set forth in paragraph 2(d) of the Complaint.

(e) Respondent admits the allegations set forth in paragraph 2(e) of the Complaint. In further response, Respondent is an EAJA-eligible within the meaning of 28 U.S.C. § 2412(2)(B) and §102.143(c) of the NLRB’s Rules and Regulations.

3. Respondent admits the allegations set forth in paragraph 3 of the Complaint.

4. With the understanding that the term “at all material times” refers to the dates of the allegations set forth in the Complaint, Respondent admits that (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) have held titles similar to those attributed to them in paragraph 4 of the Complaint. (b) (6), (b) (7)(C) held the title of (b) (6), (b) (7)(C) and concurrently was (b) (6), (b) (7)(C). In further response, Respondent admits (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) are supervisors within the meaning of Section 2(11) of the Act. Respondent denies (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) are supervisors under the Act. In further response, Respondent admits that (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) may have acted as agents of Respondent, but only if acting within the scope of their authority. (b) (6), (b) (7)(C) may have acted as an agent of Respondent, but only if acting in the capacity of (b) (6), (b) (7)(C) role as

(b) (6), (b) (7)(C) , and only if acting within the scope of (b) (6), (b) (7)(C) authority as (b) (6), (b) (7)(C)

. Respondent does not admit that every action that may have been taken by these individuals would have been within their respective scope of authority, and to the extent that they were not, denies those allegations within the meaning of Section 2(13) of the Act. All other allegations in paragraph 4 are denied.

5. (a) Respondent admits the allegations set forth in paragraph 5 of the Complaint.

(b) With the understanding that the term “at all material times” refers to the dates of the allegations set forth in the Complaint, Respondent admits the allegations set forth in paragraph 5(b).

(c) Respondent admits the allegations set forth in paragraph 5(c) of the Complaint, but states that the operative date is 2012.

6. Denied.

7. (a) Denied.

(b) The allegations set forth in paragraph 8 are legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

(c) Denied.

(d) Respondent admits only that it received an email from the Union on December 4, 2020, requesting the information set forth in paragraphs 7(d)(1) through (7). The remaining allegations are denied.

(e) Denied.

(f) Denied.

(g) Denied.

8. Denied.

9. Denied.

10. Denied.

11. Denied.

12. Respondent denies both that it has engaged in any unfair labor practices and that the General Counsel is entitled to any relief whatsoever.

13. Respondent denies that the General Counsel is entitled to the specific relief pled in the Complaint, including distributing a Notice to Employees by text messaging and by posting on social media websites and internal “apps.”

14. Respondent denies each and every allegation of the Complaint unless specifically admitted above.

### **DEFENSES**

Respondent asserts the following defenses to the Complaint without admitting that any bear the burden of proof for the defenses asserted:

1. To the extent allegations pertain to events not included in the Charge, the allegations are untimely under Section 10(b) of the Act.

2. Respondent did not fail or refuse to provide relevant information necessary to the Union's collective bargaining duties.

3. The Charging Party failed to establish the relevance of the information sought.

4. Information sought by the Charging Party is confidential.

5. Some or all of the claims against Respondent fail because they do not state a claim for which relief may be granted under the NLRA.

6. Some or all of the claims against Respondent fail because the acts allegedly taken by Respondent are not unlawful under the NLRA.

7. The General Counsel's position with regard to the allegations in the Complaint is not "substantially justified," and does not have a reasonable basis in fact or law.

8. The Complaint fails to state facts sufficient to warrant its proposed remediation.

9. The proposed remediation is fatally overbroad, beyond the Board's authority, and plainly illogical. The Complaint improperly seeks distributing a Notice to Employees by text messaging and by posting on social media websites and internal "apps," which purported remedies are outside the authority of the NLRB to issue under the Act.

10. Respondent reserves the right, upon any further disclosure of the General Counsel's

request for relief, to assert that some or all of the requests for relief sought against Respondent are, in addition to being unavailable because Respondent did not commit any violations of the NLRA, beyond the scope permitted by the NLRA and constitute improper requests for relief, or are punitive requests for relief not permitted by the NLRA.

11. To the extent the Complaint's allegations and/or its proposed remediation are (is) predicated, in any way, on any potential change in extant Board law, such retroactive application would be manifestly unfair, unwarranted, a violation of due process, and unenforceable.

12. Respondent reserves the right to present additional defenses as permitted by the NLRA and the Board's Rules and Regulations.

WHEREFORE, Respondent denies that it engaged in any act which violated the National Labor Relations Act. Respondent requests that the Complaint be dismissed in its entirety with

prejudice and that Respondent be awarded their costs and attorneys' fees in connection with this matter, and other relief as deemed appropriate.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, PLLC

/s/ Darlene Haas Awada

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Counsel for New Mexico Philharmonic, Inc.

Dated: June 29, 2022

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the within **ANSWER AND DEFENSES** has been filed and served electronically on June 29, 2022 as follows:

Musicians' Association of  
Albuquerque, Local 618 of the  
American Federation of Musicians  
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